

**Executive Summary – Enforcement Matter – Case No. 53452**  
**Southwestern Electric Power Company**  
**RN100214287**  
**Docket No. 2016-1883-IWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

AEP Pirkey Power Plant, adjacent to Red Oak Road at a point approximately six miles southeast of Hallsville, Harrison County

**Type of Operation:**

Electric power plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: No

**Texas Register Publication Date:** January 5, 2018

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$17,250

**Amount Deferred for Expedited Settlement:** \$3,450

**Total Paid to General Revenue:** \$13,800

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major/Minor Source:** Major

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** September 12, 2016

**Date(s) of NOE(s):** September 15, 2016

**Executive Summary – Enforcement Matter – Case No. 53452**  
**Southwestern Electric Power Company**  
**RN100214287**  
**Docket No. 2016-1883-IWD-E**

***Violation Information***

Failed to comply with permitted effluent limitations. Specifically, the Respondent exceeded the permitted daily maximum limitation of 0.036 milligrams per liter ("mg/L") for total selenium for the monitoring period ending April 2016 (0.113 mg/L) and May 2016 (0.114 mg/L) [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002496000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 004].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, the Respondent shall submit a permit application to modify or amend TPDES Permit No. WQ000249600 to terminate the authorization to discharge wastes from Outfall No. 004
- b. The Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing by the TCEQ.
- c. Within 45 days, the Respondent shall submit written certification to demonstrate compliance with a.
- d. Within 330 days, the Respondent shall submit written certification demonstrating that authorization to discharge wastes from Outfall No. 004 has been removed from TPDES Permit No. WQ000249600.
- e. If the Respondent discharges from Outfall 004 before TPDES Permit No. WQ000249600 is modified or amended as described in a., then within 30 days of the end of the monitoring period in which a discharge occurs from Outfall No. 004, the Respondent shall submit written certification demonstrating compliance with all permitted effluent limitations.

**Executive Summary – Enforcement Matter – Case No. 53452**  
**Southwestern Electric Power Company**  
**RN100214287**  
**Docket No. 2016-1883-IWD-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** James Boyle, Enforcement Division,  
Enforcement Team 3, MC 219, (512) 239-2527; Michael Parrish, Enforcement Division,  
MC 219, (512) 239-2548

**Respondent:** Paul Franklin, Vice President, Southwestern Electric Power Company,  
2400 Farm-to-Market Road, Hallsville, Texas 75650

**Respondent's Attorney:** N/A





Policy Revision 4 (April 2014)

## Penalty Calculation Worksheet (PCW)

PCW Revision March 26, 2014

TCEQ

<b>DATES</b>	<b>Assigned</b>	19-Sep-2016	<b>Screening</b>	6-Oct-2016	<b>EPA Due</b>	5-Dec-2016
	<b>PCW</b>	1-Nov-2016				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Southwestern Electric Power Company		
<b>Reg. Ent. Ref. No.</b>	RN100214287		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	53452	<b>No. of Violations</b>	1
<b>Docket No.</b>	2016-1883-IWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	James Boyle
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$15,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	15.0%	<b>Adjustment</b>	<b>Subtotals 2, 3, &amp; 7</b>	\$2,250
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<b>Notes</b>	Enhancement for three months of self-reported effluent violations.
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<b>Culpability</b>	No	0.0%	<b>Enhancement</b>	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0%	<b>Enhancement*</b>	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$14,326	*Capped at the Total EB \$ Amount		
Estimated Cost of Compliance	\$140,000			

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$17,250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	\$17,250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$17,250
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<b>DEFERRAL</b>	20.0%	<b>Reduction</b>	<b>Adjustment</b>	-\$3,450
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Reduces the Final Assessed Penalty by the indicated percentage.

<b>Notes</b>	Deferral offered for expedited settlement.
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<b>PAYABLE PENALTY</b>	\$13,800
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Screening Date 6-Oct-2016

Docket No. 2016-1883-IWD-E

PCW

Respondent Southwestern Electric Power Company

Policy Revision 4 (April 2014)

Case ID No. 53452

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100214287

Media [Statute] Water Quality

Enf. Coordinator James Boyle

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 15%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for three months of self-reported effluent violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 15%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 15%

Screening Date 6-Oct-2016

Docket No. 2016-1883-IWD-E

PCW

Respondent Southwestern Electric Power Company

Policy Revision 4 (April 2014)

Case ID No. 53452

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN100214287

Media [Statute] Water Quality

Enf. Coordinator James Boyle

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0002496000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 004

Violation Description

Failed to comply with permitted effluent limitations. Specifically, the Respondent exceeded the permitted daily maximum limitation of 0.036 milligrams per liter ("mg/L") for total selenium for the monitoring period ending April 2016 (0.113 mg/L) and May 2016 (0.114 mg/L).

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 30.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was used to evaluate selenium to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

## Violation Events

Number of Violation Events 2

61 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Two monthly events are recommended for April and May 2016.

## Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$14,326

Violation Final Penalty Total \$17,250

This violation Final Assessed Penalty (adjusted for limits) \$17,250

# Economic Benefit Worksheet

**Respondent** Southwestern Electric Power Company  
**Case ID No.** 53452  
**Reg. Ent. Reference No.** RN100214287  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$140,000	30-Apr-2016	17-May-2018	2.05	\$14,326	n/a	\$14,326

Notes for DELAYED costs

Estimated cost to evaluate the cause of selenium exceedance and implement improvements to achieve compliance with permitted limits. Date required is the initial date of noncompliance and the final date is the anticipated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$140,000

TOTAL

\$14,326



The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

Compliance History Report for CN600126767, RN100214287, Rating Year 2016 which includes Compliance History (CH) components from September 1, 2011, through August 31, 2016.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600126767, Southwestern Electric Power Company	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	0.10
<b>Regulated Entity:</b>	RN100214287, AEP PIRKEY POWER PLANT	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	0.39
<b>Complexity Points:</b>	23	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	06 - Electric Power Generation				
<b>Location:</b>	adjacent to Red Oak Road at a point approximately six miles southeast of Hallsville, Harrison County, Texas				
<b>TCEQ Region:</b>	REGION 05 - TYLER				

### ID Number(s):

**AIR OPERATING PERMITS** ACCOUNT NUMBER HH0037F  
**POLLUTION PREVENTION PLANNING** ID NUMBER P01698  
**INDUSTRIAL AND HAZARDOUS WASTE** EPA ID TXD000726380  
**AIR NEW SOURCE PERMITS** PERMIT 6270  
**AIR NEW SOURCE PERMITS** REGISTRATION 43466  
**AIR NEW SOURCE PERMITS** ACCOUNT NUMBER HH0037F  
**AIR NEW SOURCE PERMITS** REGISTRATION 76547  
**AIR NEW SOURCE PERMITS** REGISTRATION 80150  
**AIR NEW SOURCE PERMITS** REGISTRATION 102679  
**AIR NEW SOURCE PERMITS** EPA PERMIT PSDTX64  
**WASTEWATER** EPA ID TX0087726  
**STORMWATER** PERMIT TXR15QK89  
**AIR EMISSIONS INVENTORY** ACCOUNT NUMBER HH0037F

**AIR OPERATING PERMITS** PERMIT 31  
**INDUSTRIAL AND HAZARDOUS WASTE** SOLID WASTE REGISTRATION # (SWR) 33240  
**AIR NEW SOURCE PERMITS** PERMIT 6269  
**AIR NEW SOURCE PERMITS** REGISTRATION 41433  
**AIR NEW SOURCE PERMITS** REGISTRATION 49226  
**AIR NEW SOURCE PERMITS** AFS NUM 4820300022  
**AIR NEW SOURCE PERMITS** REGISTRATION 78665  
**AIR NEW SOURCE PERMITS** REGISTRATION 81378  
**AIR NEW SOURCE PERMITS** REGISTRATION 110729  
**WASTEWATER** PERMIT WQ0002496000  
**STORMWATER** PERMIT TXR05N745  
**STORMWATER** PERMIT TXR15UH51

**Compliance History Period:** September 01, 2011 to August 31, 2016      **Rating Year:** 2016      **Rating Date:** 09/01/2016

**Date Compliance History Report Prepared:** December 09, 2016

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** December 09, 2011 to December 09, 2016

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** James Boyle

**Phone:** (512) 239-2527

### Site and Owner/Operator History:

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |

### Components (Multimedia) for the Site Are Listed in Sections A - J

#### **A. Final Orders, court judgments, and consent decrees:**

N/A

#### **B. Criminal convictions:**

N/A

#### **C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	December 14, 2011	(985519)	Item 37	April 22, 2014	(1175564)
Item 2	January 06, 2012	(991816)	Item 38	May 19, 2014	(1181769)
Item 3	January 31, 2012	(980299)	Item 39	June 11, 2014	(1188663)
Item 4	February 20, 2012	(999177)	Item 40	July 02, 2014	(1178039)
Item 5	March 21, 2012	(1004687)	Item 41	July 23, 2014	(1200437)
Item 6	April 04, 2012	(993948)	Item 42	August 18, 2014	(1200438)
Item 7	April 10, 2012	(1011259)	Item 43	September 11, 2014	(1207019)
Item 8	May 07, 2012	(1017626)	Item 44	October 10, 2014	(1213429)
Item 9	June 11, 2012	(1025422)	Item 45	November 07, 2014	(1219684)
Item 10	July 09, 2012	(1032758)	Item 46	December 15, 2014	(1225470)
Item 11	August 20, 2012	(1039184)	Item 47	January 07, 2015	(1232407)
Item 12	September 04, 2012	(1006538)	Item 48	February 16, 2015	(1243482)
Item 13	September 12, 2012	(1048141)	Item 49	March 13, 2015	(1249850)
Item 14	October 11, 2012	(1067085)	Item 50	April 15, 2015	(1245718)
Item 15	November 12, 2012	(1067086)	Item 51	April 17, 2015	(1256730)
Item 16	November 19, 2012	(1041507)	Item 52	May 18, 2015	(1263485)
Item 17	December 12, 2012	(1067087)	Item 53	June 11, 2015	(1270609)
Item 18	January 22, 2013	(1081579)	Item 54	July 21, 2015	(1278134)
Item 19	February 13, 2013	(1081578)	Item 55	July 29, 2015	(1266784)
Item 20	March 06, 2013	(1060293)	Item 56	August 17, 2015	(1284323)
Item 21	March 08, 2013	(1090579)	Item 57	September 16, 2015	(1275669)
Item 22	April 10, 2013	(1096931)	Item 58	October 14, 2015	(1280207)
Item 23	May 20, 2013	(1107897)	Item 59	October 19, 2015	(1297651)
Item 24	June 21, 2013	(1111526)	Item 60	October 20, 2015	(1291475)
Item 25	July 10, 2013	(1118430)	Item 61	November 23, 2015	(1303096)
Item 26	August 13, 2013	(1126217)	Item 62	December 09, 2015	(1310085)
Item 27	August 22, 2013	(1114371)	Item 63	February 15, 2016	(1326207)
Item 28	September 19, 2013	(1130768)	Item 64	March 14, 2016	(1332968)
Item 29	October 09, 2013	(1136533)	Item 65	April 18, 2016	(1340102)
Item 30	November 13, 2013	(1141920)	Item 66	July 06, 2016	(1342542)
Item 31	December 11, 2013	(1148379)	Item 67	July 12, 2016	(1360320)
Item 32	January 16, 2014	(1154453)	Item 68	August 22, 2016	(1366755)
Item 33	February 20, 2014	(1161778)	Item 69	September 12, 2016	(1373450)
Item 34	March 11, 2014	(1168398)	Item 70	October 19, 2016	(1379628)
Item 35	March 24, 2014	(1157641)	Item 71	November 18, 2016	(1371177)
Item 36	April 02, 2014	(1158218)			

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 12/31/2015 (1316850)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 2 Date: 04/30/2016 (1346918)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter
- 3 Date: 05/31/2016 (1353346)  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

**F. Environmental audits:****G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
SOUTHWESTERN ELECTRIC  
POWER COMPANY  
RN100214287**

§  
§  
§  
§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2016-1883-IWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Southwestern Electric Power Company (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates an electric power plant located adjacent to Red Oak Road at a point approximately six miles southeast of Hallsville, Harrison County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$17,250 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$13,800 of the penalty and \$3,450 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN.

CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

## **II. ALLEGATIONS**

During a record review conducted on September 12, 2016, an investigator documented that the Respondent failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002496000, Effluent Limitations and Monitoring Requirements No. 1, Outfall No. 004. Specifically, the Respondent exceeded the permitted daily maximum limitation of 0.036 milligrams per liter ("mg/L") for total selenium for the monitoring period ending April 2016 (0.113 mg/L) and May 2016 (0.114 mg/L).

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

## **IV. ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Southwestern Electric Power Company, Docket No. 2016-1883-IWD-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Respondent shall submit a permit application to modify or amend TPDES Permit No. WQ000249600 to terminate the authorization to discharge wastes from Outfall No. 004 to:

Application Review and Processing Team  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing by the TCEQ.
- c. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification demonstrate compliance with Ordering Provision No. 2.a., in accordance with Ordering Provision No. 2.f., below.
- d. Within 330 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.f., below, to demonstrate that authorization to discharge wastes from Outfall No. 004 has been removed from TPDES Permit No. WQ000249600.
- e. If Respondent discharges from Outfall 004 before TPDES Permit No. WQ000249600 is modified or amended as described in Ordering Provision No. 2.a., then within 30 days of the end of the monitoring period in which a discharge occurs from Outfall No. 004, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.f., to demonstrate compliance with all permitted effluent limitations.
- f. The certifications required by these Ordering Provisions shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be signed by the Respondent and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certifications shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms



- of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
  9. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Ramona Lawrence Jr.

7/16/18

For the Executive Director

Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Paul Franklin

Signature

11 - 8 - 17

Date

PAUL FRANKLIN

Name (Printed or typed)  
Authorized Representative of  
Southwestern Electric Power Company

VP - GENERATING ASSETS SWEPCO

Title

☐ If mailing address has changed, please check this box and provide the new address below: